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CASE NO. 88-1202

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1988

IVAN P. LEIDY

PETITIONER

V.

JOHN Q. STRANAHAN, ET AL

RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF OF RESPONDENT THE VINDICATOR PRINTING COMPANY

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Co.

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QUESTION PRESENTED FOR REVIEW

Whether the United States Supreme Court should review the sua sponte dismissal of petitioner's complaint by the United States District Court for the Western District of Pennsylvania, which dismissal was upheld on appeal to the Third Circuit Court of Appeals.

TABLE OF CONTENTS

Question Presented for Review..... 1

Table of Contents..... 2

Table of Authorities..... 3, 4

Statement of Jurisdiction..... 5

Statement of the Case..... 6

Argument

There are no Circumstances Supporting a Review of the Dismissal of Petitioner's Complaint Against Respondent the Vindicator Printing Company..... 10

Conclusion..... 16

Certificate of Service..... 19

TABLE OF AUTHORITIES

Cases

Ahmad v. Levi, 414 F. Supp. 597 (E.D. Pa. 1976)..... 14

Avins v. Rutgers, 385 F. 2d 151 (3d. Cir. 1967)..... 14

Bell v. Hood, 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939 (1946)...7, 14, 15

Hagans v. Levine, 415 U.S. 528, 94 S.Ct. 1372, 39 L.Ed. 2d 577 (1974)..... 15

Miami Herald Publishing Company v. Torneillo, 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed. 2d 730 (1974)..13, 14

Mississippi Gay Alliance v. Goudeluck, 536 F. 2d 1073 (5th Cir. 1976).. 14

Newbury Port Water Co. v. Newbury Port, 193 U.S. 561, 24 S.Ct. 553, 48 L.Ed. 795 (1904)..... 15

Constitutional Provisions

Articles I, VI, VII, XII, XIV..... 16

Supreme Court Rules

Rule 21.5..... 10

Rule 21.1..... 11

Rule 17..... 11

Statutes

28 U.S.C. §1331..... 5

28 U.S.C. §1332..... 5

28 U.S.C. §1343..... 5

42 U.S.C. §1983..... 16

STATEMENT OF JURISDICTION

Jurisdiction was originally claimed on the basis of 28 U.S.C. §1332 (diversity of citizenship). Petitioner now claims jurisdiction under 28 U.S.C. §1331 (federal question) and 28 U.S.C. §1343 (civil rights protection).

STATEMENT OF THE CASE

This case began with a pro se complaint filed by petitioner Leidy in the United States District Court for the Western District of Pennsylvania against respondents Sharon Herald Newspaper Company, Ottaway Newspaper Company, and Youngstown Vindicator Newspaper Company.[1] In his "Statement of Claim" petitioner alleged that his constitutional rights were denied when respondents "refused to publish articles that was [sic] sent to them to be printed in the Editor Section

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[1] The correct names of Respondents are Sharon Herald Company, Ottaway Newspapers Company, Inc., and The Vindicator Printing Company. Consumer Communication Services, Inc. and the Canton Free Press, Inc. are wholly owned subsidiaries of respondent, The Vindicator Printing Company.

of their paper."[2]

Before any response to the Complaint was made, the District Court, sua sponte, entered a finding that the claims being made were "so wholly insubstantial and patently frivolous that [the] Court lacked subject matter jurisdiction . . ." The court proceeded to dismiss the Complaint on the authority of Bell v. Hood, 327 U.S. 678, 66 S. Ct. 773, 90 L.Ed. 939 (1946). Upon timely appeal, the Third Circuit Court of Appeals, without written opinion, affirmed the judgment of the District Court.

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[2]The Complaint also numerically listed claims for "publication of false and misleading facts," harassment, deformation [sic] of character, and invasion of privacy. None of these claims, however, were supported by any statements showing a right to relief.

It should be noted that in his petition for a writ of certiorari, Leidy has combined two separate and totally unrelated cases. The second case concerns the dismissal of a complaint filed by Leidy against respondents John Q. Stranahan and Francis J. Fornelli. Leidy's Complaint against Stranahan and Fornelli had absolutely nothing to do with his action against the respondent newspaper companies stemming from their failure to publish his letters to the editor. The cases are totally unrelated, and were considered separately by the courts below.[3] Thus, the memorandum

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[3]The case of Leidy v. Stranahan and Fornellil (Case No. 87-1427) was apparently filed in the United District Court for the Southwestern District of Pennsylvania, while the case of Leidy v. Sharon Herald Newspaper Company, et al (Case No. 88-0860) was filed in the District Court for the Western District of Pennsylvania.

order filed by the District Court for the Southwestern District of Pennsylvania, which order is included in Leidy's Petition, has absolutely nothing to do with his action against the respondent newspaper publishing companies.

ARGUMENT

THERE ARE NO CIRCUMSTANCES SUPPORTING A REVIEW OF THE DISMISSAL OF PETITIONER'S COMPLAINT AGAINST RESPONDENT THE VINDICATOR PRINTING COMPANY.

Rule 21.5 of the Ohio Supreme Court pertains to the contents of a petition for certiorari. It provides that the failure by a petitioner to present with "accuracy, brevity, and clearness" whatever is essential to a ready and adequate understanding of the case will be sufficient reason for denying his petition. Although Leidy's petition obviously meets the requirement of brevity, it is, if nothing else, apparent that the petitioner has failed to clearly and accurately set forth the reasons why his case merits further review. Other than bare allegations that his constitutional rights have been deprived (see

petitioner's table of contents), there are no stated grounds supporting further review of his case. The petition filed herein even lacks an argument in support of the allowance of his writ as required by Sup. Ct. R. 21.1(j).

In point of fact, however, there is little to be said in support of the within petition for certiorari, particularly when considered in light of the Court's standards for review. Rule 17 of the Rules of the Supreme Court of the United States states that a writ of certiorari will be granted only when there are special and important reasons therefor. The rule goes on to list circumstances or factors which would support the granting of certiorari. None of those factors exist in this case. Specifically, there was no decision by a

Court of Appeals in conflict with a decision by another Court of Appeals or with a decision by a state court of last resort. Nor was there a departure by the courts below from the accepted and usual course of judicial proceedings. Lastly, there was no decision below respecting federal law either unsettled by this Court or in conflict with any previous decisions of this Court.

The gravamen of petitioner's Complaint against Respondent The Vindicator Printing Company is that respondent failed to publish letters to the editor that petitioner had submitted to it. Petitioner alleges that doing so violated his constitutional rights. However, it is well settled, with no known authority to the contrary, that a privately owned and operated newspaper has no duty to

publish any particular matter, including letters to the editor. This concept has been expressly recognized by this Court. In the case of Miami Herald Publishing Company v. Tornillo, 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed. 2d 730 (1974), this court struck down a Florida statute granting a political candidate the right to equal space to reply to criticism of his record by a newspaper. In Miami Herald, this Court recognized that editors have a right to choose what they want to print:

> The choice of material to go into a newspaper, and the decisions made as to . . . The content of the paper . . . constitute the exercise of editorial control and judgment.

Miami Herald, 418 U.S. at 258, 94 S.Ct. at 2840.

Based on Miami Herald, other courts have also recognized that an editor's refusal to publish material submitted for publication is not actionable. Mississippi Gay Alliance v. Goudelock, 536 F.2d 1073 (5th Cir. 1976); Avins v. Rutgers, 385 F. 2d 151 (3d. Cir. 1967); Ahmad v. Levi, 414 F. Supp. 597 (E.D. Pa. 1976).

In the case at bar, the district court found that the claims presented were so insubstantial and patently frivolous that the court lacked subject matter jurisdiction. The district court specifically cited the authority of Bell v. Hood, supra, in support of its dismissal. In that case, this Court stated that a district court may dismiss a suit for want of jurisdiction where the claims presented are "wholly insubstantial and frivolous." Bell v. Hood, 327 U.S. at,

683, 66 S.Ct. at, 776. This principal was reiterated in the case of Hagans v. Levine, 415 U.S. 528, 94 S.Ct. 1372, 39 L.Ed. 2d 577 (1974), where this Court stated that "the federal courts are without power to entertain claims otherwise within their jurisdiction if they are 'so attenuated and unsubstantial as to be absolutely devoid of merit.'" Id. at 536, 94 S.Ct. at 1378, quoting Newbury Port Water Co. v. Newbury Port, 193 U.S. 561, 579, 24 S.Ct. 553, 48 L.Ed. 795 (1904).

It is readily apparent from the complaint filed in Case No. 88-0860 that petitioner's claims against respondent The Vindicator Printing Company are frivolous and wholly unsubstantial. No court has ever recognized a cause of action, state or federal, based on the refusal by

a publisher to print a letter to the editor. A complaint based on such a cause of action is meritless. Moveover, contrary to petitioner's apparent assertions,[4] there is no federal statutory right or constitutional guarantee violated by a denial of a request to print a letter to the editor. Any claim to the contrary is patently frivolous.

CONCLUSION

It has long been recognized that a federal court may dismiss an action sua sponte for lack of jurisdiction where the court determines that the claims are patently frivolous. In this case, the district court properly found that

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[4] In his petition, Peitioner refers this court to Article I, VI, VII, XIII, XIV, and the Civil Rights Act, 42 U.S.C. §1983.

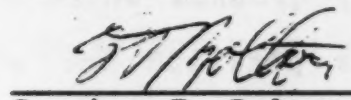
petitioner's claims of constitutional deprivation, based upon the refusal by respondents to publish his letters to the editor, were so insubstantial as to deprive the court of subject matter jurisdiction.

Petitioner has failed to set forth any grounds which merit the granting of his petition for a writ of certiorari. The failure by petitioner to set forth such grounds clearly and accurately, and in a manner which in any way relates to his complaint against respondent The Vindicator Printing Company, is itself sufficient grounds for denying the petition.

The purpose of this response, however, is to allow this Court to set aside the deficiencies of the petition, to understand the record, and to decide this case based upon the usual standards for

review. When such standards are applied, it is clear that petitioner's claims were given due consideration by the courts below, and that there is nothing in the record to suggest that further review of his case is either warranted or worthwhile.

Respectfully submitted,



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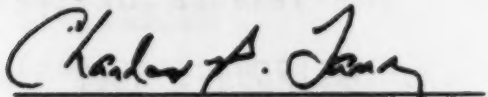

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CERTIFICATE OF SERVICE

A copy of the foregoing Brief of Respondent, The Vindicator Printing Company was duly served by regular U. S. mail, postage prepaid, this 3 day of MARCH, 1989 to: Ivan P. Leidy, Pro Se, 478 Nimick St., Sharon, Pennsylvania 16146; and Attorney William C. Kuhn, First Seneca Bank Building, 7 West State St., Sharon, Pennsylvania 16146.

Stephen T. Bolton